IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4646 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SORATHIA VELJI RATNA

Versus

RAJKOT MUNICIPAL CORPORATION

Appearance:

1. Special Civil Application No. 4646 of 1988

MR PRASHANT G DESAI for Petitioner

MR BP TANNA for Respondent No. 1-2

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 18/09/2001

ORAL JUDGEMENT

The petitioner, in this petition, has challenged the order dated 18th July 1988 Annexure.A to the petition, passed by the Civil Judge (Senior Division),

Rajkot in Civil Misc. Application No.185 of 1986. The petitioner filed the said application, inter alia, contending that the petitioner entered into contract with the respondent Municipal Corporation for carrying out the repairing work of Bhadar Pipeline. It appears that, because of the scarcity of water, the respondent Municipal Corporation decided to start of snatching water from Bhadar river and for that pipeline, tender was invited. There are different sections of work incorporated 124 items. It is the case of the petitioner that he completed the work within 1-1/2 months on war footing basis. As per the say of the petitioner, the respondent Municipal Corporation has not recorded the correct measurement and has not given the regular bills. The petitioner has stated that an amount of more than one Crore rupees is due from the respondent Municipal Corporation. As per the agreement entered into between the parties and more particularly Clause 19 of the agreement, the dispute was required to be referred to the Arbitrator. As per the say of the petitioner, the respondent no.2 Commissioner of respondent Municipal Corporation is the sole Arbitrator, however, he has not decided the matter and hence, the same was referred to the Government approved Arbitrator for his award. The said application was filed under Sec.8 of the Arbitration Act, 1940. The learned trial Judge, after hearing the parties, rejected the said application for appointment of Arbitrator by holding that there was no agreement between the parties to refer the dispute to the Arbitrator. Hence, the present petition.

2. It is very unfortunate that the petition challenging the order dated 18th July 1988 is not decided till the date. Today, when the matter is called out, learned Counsel Mr.Tanna appearing for the respondents fairly stated that, without going into the technicalities, the respondent no.2-Commissioner of Rajkot Municipal Corporation, shall decide the dispute as sole Arbitrator and learned Counsel Mr.Desai appearing for the petitioner has accepted the said statement by stating that the petitioner will have no objection as the respondents have virtually accepted the request of the petitioner. Thus, in view of the happy development taken place in the matter, nothing further is required to be done. The petition is accordingly allowed. The impugned order dated 18th July 1988 passed by the Civil Judge (Senior Division), Rajkot below Application Exh.47 is hereby quashed and set aside. The respondent no.2 shall decide the dispute between the parties as Arbitrator in accordance with law as early as possible within an outer limit of three months from the date of receipt of this

order. Rule is made absolute with no order as to costs.

18th Sept.2001   (K.R. Vyas, J.)

Sreeram.